

Message Text

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ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 STR-04 COME-00 TRSE-00 AGR-05

CEA-01 CIAE-00 DODE-00 FRB-03 H-02 INR-07 INT-05 L-02

LAB-04 NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15

TAR-01 USIA-06 PRS-01 SP-02 FEAE-00 OMB-01 /091 R

DRAFTED BY EB/OT/TA:DGRIMMER/BREDECKER V

APPROVED BY EB/OT/TA:WGBARRACLOUGH

STR:JGREENWALD

COMM:BMILLER

TREAS:WBARREDA

EUR/CE:RCASAGRANDE

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R 191717Z MAY 75

FM SECSTATE WASHDC

TO AMEMBASSY VIENNA

LIMITED OFFICIAL USE STATE 116131

E.O. 11652;N/A

TAGS: ETRD, AU

SUBJECT: AUSTRIAN CONCERN OVER US TRADE ACT OF 1974

REF: (A) VIENNA 3523, (B) VIENNA 4031

1. INRESPONSE TO REF. A, WE CONSIDER INACCURATE THE
INTERPRETATION OF SECTION 301 (B) AS OUTLINED IN A
REPORT OF THE LAW FIRM DANIELS AND HOULIHAN. SECTION 301
(B) OF THE TRADE ACT STATES: "IN DETERMINING WHAT ACTION
TO TAKE UNDER SUBSECTION (A), THE PRESIDENT SHALL CONSIDER
THE RELATIONSHIP OF SUCH ACTION TO THE PURPOSES OF THIS
ACT." THIS DOES NOT SAY THAT THE PRESIDENT SHALL CONSIDER
ONLY THE PURPOSES OF THE TRADE ACT IN DECIDING WHAT ACTION
TO TAKE UNDER SUBSECTION (A), AND LEAVES OPEN THE CONSID-
ERATION OF OTHER FACTORS IN DECIDING ON A COURSE OF
ACTION. WHILE IT IS TRUE THAT AN EARLIER VERSION OF THE
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TRADE BILL PASSED BY THE HOUSE OF REPRESENTATIVES CONTAINED

A PROVISION STATING THAT THE PRESIDENT SHOULD CONSIDER INTERNATIONAL OBLIGATIONS OF THE US IN DETERMINING ACTIONS UNDER SUBSECTION (A), ITS ABSENCE FROM THE TEXT OF THE TRADE ACT IN NO WAY IMPLIES THAT THE PRESIDENT SHOULD NOT TAKE SUCH OBLIGATIONS INTO ACCOUNT. IT IS AND REMAINS THE LONGSTANDING POLICY OF THE US TO ADHERE TO ITS INTERNATIONAL OBLIGATIONS.

2. THE MAIN REASON FOR SFC DELETION OF THE REQUIREMENT TO WEIGH INTERNATIONAL OBLIGATIONS WAS ITS BELIEF THAT THE

PRESIDENT SHOULD ACT ONLY AGAINST A COUNTRY OR COUNTRIES MAINTAINING PRACTICES SET FORTH IN SECTION 302 (A), AND THAT INNOCENT COUNTRIES SHOULD NOT BE PENALIZED.

AUTHORIZES DISCRIMINATORY RETALIATION. THE PRESIDENT ALSO IS GIVEN DISCRETION AND AUTHORITY TO TAKE ACTIONS ON AN MFN BASIS IF HEDEEMS THIS APPROPRIATE. HIS DECISION TO DO SO, HOWEVER, IS SUBJECT TO THE TWO-HOUSE SIMPLE MAJORITY OVERRIDE PROCEDURE IN SECTION 302. THE SFC REPORT CLEARLY STATES THAT US IS NOT TO UNDERTAKE ACTIONS IN "TOTAL DISDAIN OF APPLICABLE INTERNATIONAL AGREEMENTS." BUT THE SFC BELIEVED WITH EQUAL CONVICTION THAT PRESIDENT MUST HAVE AVAILABLE PERSUASIVE RETALIATORY AUTHORITY TO DETER OTHERS FROM MAINTAINING UNFAIR ADVANTAGES FOR WHICH THE US CANNOT FIND ADEQUATE RECOURSE WITHIN THE CURRENT SCOPE AND OR PRACTICES OF GATT.

3. AS SET FORTH IN SECTION 121 (A), THE TRADE ACT ENJOINS THE PRESIDENT TO WORK TOWARD AN OPEN, EQUITABLE AND NON-DISCRIMINATORY WORLD TRADING SYSTEM, AN OBJECTIVE WHICH COINCIDES WITH THE FUNDAMENTAL PRINCIPLES OF THE GATT. SINCE A MAJOR OBJECTIVE OF THE ACT IS ALSO REFORM OF THE GATT ITSELF, IT MAY BE INFERRED THAT THE CONGRESS ATTACHES HIGH IMPORTANCE TO THE GENERAL AGREEMENT AS A MEANS FOR UNDERPINNING A NON-DISCRIMINATORY WORLD TRADING SYSTEM. WE THEREFORE THINK THAT THE CONGRESS WOULD NOT FIND IT INCONSISTENT THAT WHENEVER THE PRESIDENT WAS REQUIRED BY CIRCUMSTANCES SET FORTH IN SECTION 301 (A) TO CONSIDER VARIOUS COURSES OF ACTION, HE WOULD IN FACT WEIGH THEIR IMPACT ON OUR INTERNATIONAL OBLIGATIONS, LIMITED OFFICIAL USE

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EXPECIALLY WITH RESPECT TO THE GATT.

4. EMBASSY MAY DRAW ON FOREGOING IN RESPONSE TO APPROPRIATE GOA OFFICIALS. INGERSOLL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRADE LAW, GOVERNMENT REACTIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 MAY 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE116131
Document Source: CORE
Document Unique ID: 00
Drafter: DGRIMMER/BREDECKER V
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750175-1072
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750539/aaaabirx.tel
Line Count: 111
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 VIENNA 3523, 75 VIENNA 4031
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 01 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <01 APR 2003 by ElyME>; APPROVED <16 SEP 2003 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: AUSTRIAN CONCERN OVER US TRADE ACT OF 1974
TAGS: ETRD, AU, US
To: VIENNA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006